IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12583 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINBHAI MOHANBHAI RAIYANI & 4 - Petitioner(s)
Versus
STATE OF GUJARAT THRO' THE SECRETARY & 2 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1 - 5.
Mr.Sunit Shah, Ms.Archna Raval and Ms.Sandhya Natani, AGPs for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 27/11/2006

ORAL JUDGMENT

1. RULE. The learned AGP is directed to waive service. The petition is taken up for final hearing and disposal today.

2. This petition challenges Notice dated 17.06.2006 (Annexure-E) whereunder respondent No.2- Registrar, Co-operative Societies, has in exercise of powers under Section 81(1)(a) of the Gujarat Co-operative Societies Act, 1961 (the Act) called upon the petitioners herein to show cause why the Managing Committee should not be removed and an administrator appointed for the three defaults stated in the impugned show cause notice.

3. It is an admitted fact that elections for the Managing Committee were declared on 29.05.2006, were held on 22.06.2006 and results declared on 24.06.2006. The newly constituted body came in to effect on 05.07.2006.

4. Mr.S.N.Shelat, learned senior advocate appearing on behalf of the petitioners submitted that each of the petitioners has been elected for the first time and on a bare perusal of the impugned show cause notice, the so called defaults for which the committee is to be removed pertain to a committee which was in existence in past and none of the petitioners are in any way responsible for the acts alleged in show cause notice. That merely because certain members of the newly constituted body are common with the members of the earlier Managing Committee, the present Committee cannot be held liable for defaults, if any, of the Committee or Committees which existed in past. That once the Committee which is supposed to have committed the alleged default is not in existence the entire exercise of removing the present Committee, which has come into existence at a subsequent point of time, is a futile exercise and cannot be permitted. That as the challenge is to the jurisdiction of powers by which the Registrar can initiate action under Section 81(1)(a) of the Act, the Court is within its right to entertain the petition even at the show cause notice stage and should do so to prevent long drawn out litigation and unwarranted harassment to the petitioners as laid down by the Apex Court in the case of Calcutta Discount Co. Ltd. V/s. Income-Tax Officer, Companies

District I, Calcutta and another reported in AIR 1961 SC 372, which has been since reiterated by the Apex Court in the case of Whirlpool Corporation V/s. Registrar of Trade Marks, Mumbai reported in (1998) 8 SCC 1. He, therefore, urged that impugned notice be quashed and set aside in the facts of the case.

5. In support of the submissions was made, he has placed reliance on unreported decision of this Court rendered in case of Zaroli Vibhag Jungle Kamdar Sahkari Mandali Ltd., V/s.H.M.Joshi & Ors.in SCA No.1551 & 1552 of 1967 dated 17.06.1971. He has also referred to the dictionary meaning of the term 'action' as referred to in Sub-Section 6 of Section 81 of the Act. One more contention was based on the concept of bias, more particularly, departmental bias. However, for the reasons stated hereinafter, it is not necessary to deal with the contentions based on provisions of Section 81(6) of the Act and departmental bias.

6. The learned AGP appearing on behalf of the respondents has placed reliance on affidavit-in-reply filed in a cognate matter being Special Civil Application No.12589 of 2006. The principal emphasis is on the fact that the petitions

need not be entertained as the petitioners have approached the Court at the show cause notice stage and whatever the petitioners would like to state, can be considered by the respondent-authorities on filing of the appropriate reply. She has also placed reliance on the decision in case of The Joint Registrar of Co-Op. Soc., Madras and Ors. V/s. P.S.Rajagopal Naidu and Others reported in AIR 1970 Madras 212 to submit that the Registrar is not divested of his powers merely because some members of the Managing Committee are different vis-a-vis the Managing Committee which was in existence at the point of time when the default was committed. That the committee is, in-fact, a continuous body and members cannot be heard to state that they were not a party when the defaults were committed. Referring to provisions of Section 85 of the Act, it was submitted that on receipt of the audit Report, the Managing Committee is expected to take remedial measures within the prescribed period and if the Committee fails to do so, it would be deemed have failed in its duty to Act in accordance with provisions of the Act and the bye-laws, which would entitle the Registrar to exercise powers vested in him in terms of Section 81 of the Act.

7. The facts are not in dispute. The petitioners, in the present petition, are members who have been elected for the first time and hence are entitled to claim that they cannot be held liable for the defaults of the preceding Managing Committee/Committees, merely on the strength of the fact that they constituted a part of the present committee, which contains other members of the present committee who were also part and parcel of the preceding Committee. This fact assumes importance in light of the three allegations made in the impugned notice.

8. The first charge is that a sum of Rs.2.50 Crores has been given as a loan to Rajkot Mercantile Co-0p. Bank, Rajkot despite the fact that said Mercantile Co-operative Bank was not licensed by Reserve Bank of India and that the loan has been sanctioned without taking into consideration the capacity of the said loanee bank as well as without complying with the requisite documentation formalities for sanctioning the loan. The said loan has been sanctioned in there tranches on 12.02.2001, on 29.09.2003 and on 31.01.2004. It is further stated in the Notice that the said Mercantile Co-Op. Bank has been directed to be wound up by an order dated 19.09.2005 and as of 13.06.2006 a total sum of Rs.2,45,13,556.00 is

outstanding for which no proper steps to effect recovery have been taken by the Managing Committee.

8. The second charge is that the building to be constructed for the head office of the Bank was sanctioned on 07.08.2003 for a total sum of Rs.5.39 Crores against which a sum of Rs.5.98 Crores has been spent toward furniture, fixtures and interior decoration which is not in consonance with the basic objects of the Bank and is likely to affect the interest of the Bank in the long run.

8.2. The third charge is that as per report dated 12.11.2005 issued by NABARD the following amounts have been spent as donations;

Year	**Amount**
2002-2003	Rs.1,45,000/-
2003-2004	Rs.1,15,000/-
2004-2005	Rs.1,41,000/-

and the same is in violation of the guidelines dated 16.03.1991 issued by RBI and dated 13.10.2004 issued by Co-operative Department.

9. On a plain perusal of the aforesaid three charges, it becomes apparent that the present Managing Committee which has come into existence only on 05.07.2006 was never involved in any of the decision making process, for which the changes are levelled in the impugned Notice. Nor is the impugned Notice based on failure to to take remedial measures under Section 85 of the Act as pleaded by the learned AGP. Therefore, even if one proceeds on the footing that the charges have some prima-facie basis, there is no material to link the present Managing Committee for the so-called defaults. It is well settled that the Authority in exercise of its jurisdiction has to have some material in its possession so as to prima facie establish existence of jurisdictional facts which would operate as a live link between the charges levelled and the person charged with such charges. In other words, even for the purposes of arriving at a prima facie opinion that the persons charged with have committed certain defaults, there must be some material in existence with the authority before the authority can exercise such jurisdiction. In the present case, such material to link the present Managing Committee with the defaults for which it is charged with is singularly missing. Hence, in absence of the jurisdictional facts the action of respondent No.2- Registrar in

issuing impugned show-cause notice is bad in law being without jurisdiction.

10. The concept of a committee denotes that a group of people come together to discuss and arrive at a collective decision. When the persons who constitute the Committee, which is charged with having committed certain defaults, are different, either all or some of them, it cannot be stated that such persons were party to the collective decision taken at a point of time when such persons were not constituting the committee which took the decision which is considered to be the genesis of the so-called default. Thus, on any count, the impugned notice is without jurisdiction.

11. In the circumstances, without entering into any discussion on any of the other issues raised by the parties, this petition is required to be allowed on this limited ground, namely, want of jurisdiction. Petition is accordingly allowed. There shall be no order as to costs.

(D.A.MEHTA, J.)

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